

**SUBSTITUTE NO. 1 TO ORDINANCE NO. 12-070**

**ORDINANCE AUTHORIZING THE ISSUANCE OF THE CITY'S GENERAL OBLIGATION BONDS, IN ORDER TO PROVIDE THE FUNDS NECESSARY TO REFUND CERTAIN OUTSTANDING PRIOR GENERAL OBLIGATION BONDS OF THE CITY; PROVIDING FOR THE SALE OF THE BONDS; AND AUTHORIZING OTHER NECESSARY ACTION.**

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Rev. #1  
#3750

Sponsor:

Council  
Member  
Freel

**WHEREAS**, the City has determined to refund certain of the City's outstanding General Obligation Bonds, and in order to finance such refunding the City has determined to issue its General Obligation Bonds (the "Bonds"), in an aggregate principal amount not to exceed \$47,000,000 (the "Refunding Project"); and

**WHEREAS**, the City has heretofore adopted the General Obligation Bond Ordinance, No. 83-019, Division 4 of Article VI of Chapter 2 of the Wilmington City Code (the "General Ordinance"), authorizing the City to issue General Obligation Bonds secured by a pledge of the City's full faith, credit and taxing power, for the purpose of, among other things, paying the costs of refunding outstanding debt of the City; and

**WHEREAS**, this Substitute Ordinance is a Supplemental Ordinance adopted pursuant to the General Ordinance and provides for the issuance and sale of the Bonds.

**THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:**

Section 1. Defined Terms. Terms used in this Substitute Ordinance and not otherwise defined shall have the meaning specified in the General Ordinance.

Section 2. Authorization of General Obligation Bonds. The City hereby authorizes the issuance of its General Obligation Bonds in an aggregate principal amount not to exceed \$47,000,000 (the "Bonds") pursuant to and in accordance with the General Ordinance, as supplemented by this Ordinance and the Bond Committee Resolution (as defined herein) for the purpose of financing the Refunding Project. The Bonds shall be sold at private negotiated sale or competitive sale as determined by such Resolution of the Bond Committee.

The Bonds shall be awarded and sold by the Bond Committee to an underwriter or group of underwriters to be selected by the Bond Committee (the "Underwriter") at a purchase price and in accordance with such terms and conditions as will be set forth: (i) in the case of a negotiated sale, in a Bond Purchase Agreement to be entered into by the Underwriter and the City, or (ii) in the case of a competitive sale, in a Bid Form

submitted to the Bond Committee in response to an Invitation to Bid prepared and distributed by the Bond Committee. In the case of clause (ii) above, the Bond Committee will accept the Bid Form which represents the lowest true interest cost to the City. The appropriate officials of the City are hereby authorized to enter into such Bond Purchase Agreement and to execute the Bond Purchase Agreement on behalf of the City, or to accept the most favorable Bid Form.

The Bonds shall bear such rate or rates of interest (provided that the true interest cost of the Bonds does not exceed 7%), shall mature in such principal amounts and on such dates, shall be subject to redemption, shall bear such series designation, shall be sold at such price and in such manner, and shall be in such form and contain or be subject to such other terms and conditions, as shall be determined in the Resolution adopted by the Bond Committee (the "Bond Committee Resolution"). The Bond Committee Resolution shall set forth the particular prior general obligation bonds which will be refunded as part of the Refunding Project.

Section 3. Authorization of Paying Agent's Agreement. A fiscal agent, paying agent and registrar for the Bonds (the "Paying Agent") may be selected and appointed by the Bond Committee. In the event that it is determined that it is advantageous to use a Paying Agent, the appropriate officials of the City are hereby authorized and directed to contract with the Paying Agent in connection with the performance of duties as paying agent and registrar on the usual and customary terms. The Paying Agent Agreement shall be in such form as shall be approved by the Bond Committee.

Section 4. Preparation of Preliminary Official Statement. The Bond Committee is authorized and directed to prepare, approve and "deem final" a Preliminary Official Statement and an Official Statement with respect to the Bonds to be used in connection with the public sale of the Bonds. The final Official Statement shall contain the final terms of the Bonds and shall be prepared for use in the public offering and sale of the Bonds.

Section 5. Execution of Bonds. The Bonds shall be executed by the manual or facsimile signatures of the Mayor, the City Treasurer and the City Auditor, and by the actual or facsimile impression of the City seal, both attested by the manual or facsimile signatures of the City Clerk or Deputy City Clerk.

Section 6. Security for the Bonds. The full faith, credit and taxing power of the City is hereby pledged to the prompt payment of the principal of, premium, if any, and the interest on the Bonds. The Bonds shall be the direct and unlimited obligations of the City, and unless paid from other sources, the City shall levy *ad valorem* taxes upon all taxable property in the City for the payment of the Bonds without limitation as to rate or amount.

Section 7. Federal Tax Covenants. In the event that the Bonds are issued on a tax-exempt basis, the City hereby covenants not to take or omit to take any action so as to cause interest on the Bonds to be no longer excluded from gross income for purposes of federal income taxation and to otherwise comply with the requirements of Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended (the "Code"), and all

applicable regulations promulgated with respect thereto, throughout the term of the Bonds. The City further covenants with the registered owners of the Bonds that it will make no investments or other use of the proceeds of the Bonds which would cause such Bonds to be "arbitrage bonds" as defined in Section 148 of the Code. The City further covenants to comply with the rebate requirements (including the prohibited payment provisions) contained in Section 148(f) of the Code in any regulations promulgated thereunder, to the extent applicable, and to pay any interest or penalty imposed by the United States for failure to comply with rebate requirements, to the extent applicable. In the event that the Bonds could be issued on a bank-eligible basis, the Bond Committee is hereby delegated the authority to designate the Bonds pursuant to Section 265 of the Code.

Section 8. Further Action. The appropriate officers of the City are hereby authorized and directed to take all such action, execute, deliver, file and record all such documents, publish all notices and otherwise carry out the intent of the General Ordinance and this Ordinance in the name of and on behalf of the City.

Section 9. Inconsistent Provisions. In the event that any provision of the Bonds, or any term or condition contained in any agreement relating to the Bonds or in this Supplemental Ordinance, shall be inconsistent with any of the provisions of the General Ordinance, the provision of the Bonds, such agreements and this Supplemental Ordinance shall be controlling with respect to the Bonds, such agreements and this Supplemental Ordinance.

Section 10. Relation to General Ordinance. This Substitute Ordinance is supplemental to the General Ordinance and all sections of the General Ordinance, except as modified herein in accordance therewith, are applicable to the Bonds authorized hereunder.

Section 11. Effective Date. This Substitute Ordinance shall become effective upon its passage by Council and approval by the Mayor.

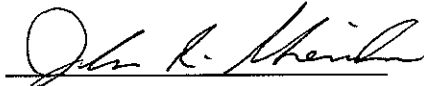
First Reading..... November 1, 2012  
Second Reading.....November 1, 2012  
Third Reading.....November 15, 2012

Passed by City Council, Nov. 15, 2012

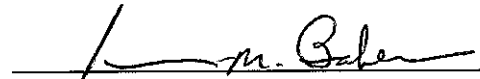
  
President of City Council 11/15/12

ATTEST:   
City Clerk

Approved as to form this 8<sup>th</sup> day of  
November, 2012.

  
City Solicitor

Approved this 14<sup>th</sup> day of Nov., 2012

  
Mayor

**SYNOPSIS:** This Substitute Ordinance authorizes the issuance of up to \$47,000,000 aggregate principal amount General Obligation Bonds, in order to finance the refunding of certain prior outstanding general obligation bonds of the City.